

Message Text

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ACTION IO-10

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TO SECSTATE WASHDC IMMEDIATE 7370

INFO AMEMBASSY LONDON

AMEMBASSY PARIS

AMEMBASSY PRETORIA

AMEMBASSY MASERU

AMCONSUL CAPETOWN

UNCLAS USUN 4981

CAPETOWN FOR EMBASSY

MASERU FOR ASSISTANT SECRETARY EASUM

E.O. 11652: N/A

TAGS: UN, PFOR, SF

SUBJ: SOUTH AFRICA IN UNITED NATIONS

FOLLOWING IS TEXT OF AMB SCALI'S CHALLENGE OF GA
PRESIDENT'S RULING ON SOUTH AFRICA IN GA PLENARY NOV 12:

QTE: MR. PRESIDENT:

MY DELEGATION REGRETS WE HAVE NO CHOICE BUT TO CHALLENGE
YOUR RULING.

WE DID NOT COME TO THIS DECISION LIGHTLY AND WE DO SO ONLY
BECAUSE OF THE OVERRIDING IMPORTANCE OF THE ISSUE--
THE FUNDAMENTAL RIGHTS OF A MEMBER STATE UNDER THE CHARTER
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OF THE UNITED NATIONS. THERE IS ALSO AN OBVIOUS CONFLICT

BETWEEN YOUR RULING AND THE LEGAL OPINION GIVEN THIS ASSEMBLY ON NOVEMBER 11, 1970 AT THE 25TH SESSION. FURTHER THERE IS A CONFLICT BETWEEN YOUR RULING AND THE PRACTICE THE GENERAL ASSEMBLY HAS CONSISTENTLY FOLLOWED IN THE FOUR YEARS SINCE THEN, AT THE 25TH, 26TH, 27TH AND 28TH SESSIONS, AND THE 6TH SPECIAL SESSION HELD IN THE SPRING OF THIS YEAR. IN ADDITION, AS WE ALL KNOW, DURING THIS 29TH SESSION SOUTH AFRICA WAS ALLOWED TO VOTE WITHOUT OBJECTION AFTER THE ASSEMBLY'S DECISION ON ITS CREDENTIALS WAS MADE.

THE LEGAL OPINION GIVEN AT THE 25TH SESSION REMAINS AS VALID TODAY AS IT WAS THEN. IT AFFIRMS THAT, UNDER THE CHARTER, THE ASSEMBLY MAY NOT DEPRIVE A MEMBER OF ANY OF THE RIGHTS OF MEMBERSHIP. THE ASSEMBLY MAY BE MASTER OF ITS RULES OF PROCEDURE BUT NO MAJORITY, HOWEVER LARGE, CAN IGNORE OR CHANGE THE CLEAR PROVISIONS OF THE CHARTER IN THIS WAY.

WE CONSIDER IT A VIOLATION OF THE RULES OF PROCEDURE AND OF ARTICLES 5 AND 6 OF THE CHARTER FOR THE ASSEMBLY TO ATTEMPT TO DENY A MEMBER STATE OF THE UNITED NATIONS ITS RIGHTS TO PARTICIPATE IN THE ASSEMBLY, THROUGH THIS TYPE OF UNPRECEDENTED ACTION. ARTICLE 5 OF THE CHARTER EXPRESSLY LAYS DOWN THE RULES BY WHICH A MEMBER MAY BE SUSPENDED; ARTICLE 6 OF THE CHARTER SPECIFICALLY PROVIDES THE PROCESS BY WHICH A MEMBER MAY BE EXPELLED. THE ASSEMBLY IS NOT EMPOWERED TO DEPRIVE A MEMBER OF THE RIGHTS AND PRIVILEGES OF MEMBERSHIP OTHER THAN IN ACCORDANCE WITH ARTICLES 5, 6 AND 19 OF THE CHARTER. NONE OF THESE CIRCUMSTANCES APPLIES IN THIS CASE.

AT THE 25TH SESSION OF THIS ASSEMBLY, THE THEN LEGAL COUNSEL OF THE UNITED NATIONS RULED:

"ARTICLE 5 OF THE CHARTER LAYS DOWN THE FOLLOWING REQUIREMENTS FOR THE SUSPENSION OF A MEMBER STATE FROM THE RIGHTS AND PRIVILEGES OF MEMBERSHIP:

(A) PREVENTIVE OR ENFORCEMENT ACTION HAS TO BE TAKEN BY THE SECURITY COUNCIL AGAINST THE MEMBER STATE CONCERNED;

(B) THE SECURITY COUNCIL HAS TO RECOMMEND TO THE GENERAL ASSEMBLY

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ASSEMBLY THAT THE MEMBER STATE CONCERNED BE SUSPENDED FROM THE EXERCISE OF THE RIGHTS AND PRIVILEGES OF MEMBERSHIP;

(C) THE GENERAL ASSEMBLY HAS TO ACT AFFIRMATIVELY ON THE FOREGOING RECOMMENDATION BY A TWO-THIRDS VOTE, IN ACCORDANCE WITH ARTICLE 18, PARAGRAPH 2, OF THE CHARTER, WHICH LISTS 'THE SUSPENSION OF THE RIGHTS AND PRIVILEGES OF MEMBERSHIP' AS AN 'IMPORTANT QUESTION'.

THE PARTICIPATION IN MEETINGS OF THE GENERAL ASSEMBLY IS

QUITE CLEARLY ONE OF THE IMPORTANT RIGHTS AND PRIVILEGES OF MEMBERSHIP. SUSPENSION OF THIS RIGHT THROUGH THE REJECTION OF CREDENTIALS WOULD NOT SATISFY THE FOREGOING REQUIREMENTS AND WOULD THEREFORE BE CONTRARY TO THE CHARTER."

NOTHING HAS TRANSPIRED IN THE GENERAL ASSEMBLY OR THE SECURITY COUNCIL TO AFFECT THE VALIDITY OF THAT RULING. SINCE THE SECURITY COUNCIL REMAINS SEIZED OF THE RANGE OF SOUTH AFRICAN QUESTIONS, THERE IS ALL THE MORE REASON WHY THE ASSEMBLY CANNOT PROPERLY SEEK TO TAKE ACTION TO DEPRIVE SOUTH AFRICA OF ITS RIGHTS OF MEMBERSHIP. THE EFFECT OF THE RESOLUTION OF SEPTEMBER 30, 1974 ON CREDENTIALS HAS THE SAME EFFECT AS RESOLUTIONS OF PREVIOUS YEARS.

MR. PRESIDENT, YOUR ACTION IS TAKEN IN THE CONTEXT OF THE ASSEMBLY'S ACTION ON THE CREDENTIALS ITEM. THE POLICY OF A GOVERNMENT IS NOT A LEGITIMATE CONSIDERATION IN THIS CONTEXT. THOSE POLICIES MAY RIGHTLY BE EXAMINED AT OTHER TIMES AND IN OTHER CONTEXTS BUT NOT HERE. IN THE PRESENT CASE, NO ONE CAN REASONABLY ARGUE WITH THE TECHNICAL PROPRIETY OF THE CREDENTIALS OF THE SOUTH AFRICAN DELEGATION.

SOUTH AFRICA IS NOT THE ONLY MEMBER STATE WHOSE GOVERNMENT IS NOT CHOSEN BY FREE ELECTIONS WHERE ALL ADULTS ARE ENTITLED TO VOTE. WE MUST NOT SEEK TO CHANGE THE MEMBERSHIP REGULATIONS TO CONVERT THIS INTO AN ORGANIZATION OF LIKE MINDED GOVERNMENTS. WERE WE TO APPLY THAT CRITERION WE WOULD CEASE TO BE A UNIVERSAL INSTITUTION AND WOULD BECOME A MUCH DIFFERENT CLUB INDEED.

THESE FACTS AND A RESPECT FOR THE CHARTER HAVE LED THE PAST PRESIDENTS OF THE GENERAL ASSEMBLY TO RULE THAT DECISIONS INVOLVING THE NON-ACCEPTANCE OR REJECTION OF SOUTH AFRICAN

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CREDENTIALS CONSTITUTE AN EXPRESSION OF INTERNATIONAL OUTRAGE AT THE HEINOUS POLICY OF APARTHEID. BUT EACH OF THESE PRESIDENTS HAS ALSO RULED THAT SUCH DECISIONS DO NOT SERVE TO DEPRIVE SOUTH AFRICA OF ITS FUNDAMENTAL RIGHT OF MEMBERSHIP, RIGHTS WHICH INCLUDE THE RIGHT TO TAKE ITS SEAT IN THE GENERAL ASSEMBLY, TO SPEAK, TO RAISE QUESTIONS AND MAKE PROPOSALS, AND TO VOTE.

WE CONSIDER THAT YOUR RULING FAILS TO TAKE INTO ACCOUNT THAT LAW OF THE CHARTER, THE EXISTING LEGAL OPINION AND THE CONSISTENT SERIES OF APPLICABLE PRECEDENTS.

FOR THESE REASONS AND PURSUANT TO RULE 71, WE MUST CHALLENGE YOUR RULING, WE REQUEST THAT, IN ACCORDANCE WITH RULE 71, YOU PUT THIS CHALLENGE IMMEDIATELY TO THE

VOTE. I REQUEST THAT THE VOTE BE A RECORDED VOTE.

THANK YOU, MR. PRESIDENT. UNQTE.
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